IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Crl.Rev.Pet.No. 3059 of 2007()

CRA.437/2006 of ADDL.SESSIONS COURT,-I, MAVELIKKARA
CC.320/2003 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

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REVN. PETITIONER: APPELLANT/ACCUSED

KRISHNANKUTTY @ THAMPAN,
S/O NEELAKANDAN, AGED 82 YEARS,
MUTHIRAKALAYIL VEEDU, CHERUMUGHA MURI,
NOORANADU, ALAPPUZHA DISTRICT.

BY ADV. SRI.N.RATHEESH

RESPONDENTS: RESPONDENT/COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3059 OF 2007

Dated this the 20th day of August, 2007

O R D E R

The revision petitioner, who was the accused in C.C.No.320/2003 on the file of the JFCM, Mavelikara for offences punishable under sections 447, 341 and 325 IPC, challenges the conviction entered and the sentence passed by the courts below against him for the aforementioned offences.

2. The case of the prosecution can be summarised as follows:-

PW1 and the accused were on inimical terms in view of the civil dispute existing between them. On the misunderstanding that it was on the instigation of PW1 that his nephew had beaten the accused, on 24.11.02 at about 10 a.m. the accused criminally trespassed into the compound of PW1 and wrongfully restrained him by catching hold of the collar of his shirt with the left hand and squeezed the scrotum of PW1 with his right hand resulting in the scrotum sustaining a cut injury and the right testicle coming out with profuse bleeding.

3. On the side of the prosecution 8 witnesses were examined as PWs 1 to 8 and 5 documents were marked as Exhibits P1 to P5.

4. The accused denied the incriminating circumstances appearing against him during his examination under section 313(1)(b) Cr.P.C. He did not adduce any defence evidence.

5. The learned Magistrate after trial, as per judgment dated 22.8.06 found the revision petitioner guilty of the offences and sentenced him to undergo simple imprisonment for three months under section 447 IPC, to undergo simple imprisonment for one month under section 341 IPC and to undergo simple imprisonment for three years under section 325 IPC with a direction that the sentences shall run concurrently. On appeal preferred by the revision petitioner as Crl.Appeal No.437/2006 before the Additional Sessions Court-I, Mavelikara, the lower appellate court confirmed the conviction but reduced the sentence of imprisonment to a fine of Rs.500/- (Rupees five hundred only) and on default to pay the fine, to suffer simple imprisonment for one month under sections 447 and 341 IPC each, and to undergo simple imprisonment for three months and to pay a fine of Rs.5,000/- (Rupees five thousand only) and on default to pay the fine, to suffer simple imprisonment for three months under section 325 IPC. The fine amount, as and when realised, was directed to be paid to PW1 by way of compensation under section 357(1) Cr.P.C. It is the said judgment which is assailed in this revision.

6. Eventhough the learned counsel for the revision petitioner assailed the conviction concurrently recorded against him by the courts below, I am not inclined to disturb the same which is passed after a careful evaluation of the oral and documentary evidence in the case. In the absence of any infirmity in the appreciation of the evidence by the courts below, this court, sitting in the rarefied revisional jurisdiction, will be loathe to dislodge the said finding. The conviction recorded against the revision petitioner is accordingly confirmed.

7. What now survives for consideration is the legality or otherwise of the sentence imposed on the revision petitioner. The revision petitioner is an 82 year old man who was impelled by the misunderstanding that it was PW1, who had instigated his nephew to beat the revision petitioner. He was not armed with any weapon also. No doubt, in the grappling which took place between the two, the revision petitioner, probably to extricate himself, might have squeezed the scrotum of PW1 resulting in his sustaining an injury. The parties are standing in somewhat near relationship with each other. Under these circumstances, I do not think that the revision petitioner deserves penal servitude by way of incarceration. I am of the view that an appropriate fine and imprisonment till the rising of the court shall meet the ends of justice. Accordingly, the sentence imposed on the revision petitioner by the lower appellate court is modified as follows:-

For the conviction under sections 447 and 341 IPC, the revision petitioner shall pay a fine of Rs.1,500/- (Rupees one thousand five hundred only) for each of the offences and on default to pay the fine, he shall undergo simple imprisonment for one month for each of the defaults. For the conviction under section 325 IPC, the revision petitioner shall undergo imprisonment till the rising of the court and shall pay a sum of Rs.10,000/- (Rupees ten thousand only) to PW1, the injured, by way of compensation under section 357(3) Cr.P.C. The compensation shall be paid within 45 days from today. On default to pay the compensation, he shall suffer simple imprisonment for three months.

In the result, this revision is disposed of confirming the conviction and modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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